

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arizona Board of Regents for and on)
behalf of Arizona State University, an)
Arizona body corporate,)
Plaintiff,)
vs.)
Shawn Hollenbeck, a single man,)
Defendant.)

No. CV-13-452-PHX-LOA

**NOTICE OF ASSIGNMENT
AND ORDER**

Pursuant to Local Rule (“LRCiv”) 3.8(a), Rules of Practice, effective December 1, 2012, civil cases are, and will be, randomly assigned to a United States district judge or to a United States magistrate judge. This matter has been assigned to the undersigned United States Magistrate Judge.

I. Magistrate Judge Jurisdiction

As a result of the aforesaid Local Rule and assignment, if all parties consent in writing, the case will remain with the assigned Magistrate Judge pursuant to 28 U.S.C. 636(c)(1) for all purposes, including trial and final entry of judgment. If any party chooses the district judge option, the case will be randomly reassigned to a U.S. district judge. To either consent to the assigned Magistrate Judge or to elect to have the case heard before a district judge, the appropriate section of the form, entitled Consent To Exercise Of Jurisdiction By United States Magistrate Judge, must be completed, signed and filed. The party filing the case or removing it to this District Court is responsible for serving all parties

1 with the consent forms. Each party must file a completed consent form and certificate of
 2 service with the Clerk of the Court no later than 14 days after entry of appearance or as
 3 otherwise directed by the Court, and shall serve a copy upon all other parties of record in the
 4 case.¹

5 Any party is free to withhold consent to a magistrate judge without adverse
 6 substantive consequences. 28 U.S.C. 636(c)(2); Rule 73(b), Fed.R.Civ.P.; *Anderson v.*
 7 *Woodcreek Venture Ltd.*, 351 F.3d 911, 914 (9th Cir. 2003) (pointing out that consent is the
 8 “touchstone of magistrate judge jurisdiction” under Title 28 U.S.C. §636(c)). “A party to a
 9 federal civil case has, subject to some exceptions, a constitutional right to proceed before an
 10 Article III judge.” *Dixon v. Ylst*, 990 F.2d 478, 479 (9th Cir. 1993) (citing *Pacemaker*
 11 *Diagnostic Clinic of Am., Inc. v. Instromedix, Inc.*, 725 F.2d 537, 541 (9th Cir. 1984) (*en*
 12 *banc*)).

13 A review of the District Court’s docket reflects the Complaint in this case was filed
 14 on March 5, 2013. (Doc. 1) Plaintiff shall have until and including **Tuesday, March 19,**
 15 **2013**, within which to make its selection to either voluntarily consent to a magistrate judge
 16 presiding over this case or elect to have the case assigned to a United States district judge.

17 **II. Federal Rules of Civil Procedure 12(b)(6) and Rule 12(b)**

18 Motions pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(c) are
 19 discouraged in the District Court of Arizona if the defect can be cured by filing an amended
 20 pleading. Therefore, the parties’ counsel must meet and confer prior to the filing of such
 21 motions to determine whether it can be avoided. Consequently, motions to dismiss pursuant
 22 to Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim upon which relief may be granted,
 23 or Rule 12(c), Fed.R.Civ.P., for judgment on the pleadings must contain a certification of
 24

25 ¹The consent/election form was or will be electronically provided to Plaintiff’s
 26 counsel by the Clerk. One may also find the consent/election form on the District’s web site,
 27 click on “Local Rules” at the top of the page, then click on “Forms” on the left side of the
 28 page and then click on and print the appropriate form. Consent/election forms are not to be
 e-filed. Consent/election forms are to be filed in paper form with the Clerk’s Office. ECF
 Policies and Procedure Manual, II, ¶ P at p.25.

1 conferral, indicating that counsel have conferred to determine whether an amendment could
2 cure a deficient pleading, and have been unable to agree that the pleading is curable by a
3 permissible amendment. In addition, counsel shall endeavor not to oppose motions to amend
4 that are filed prior to the Rule 16 scheduling conference or within the time set forth in the
5 Rule 16 case management order. Motions to dismiss that do not contain the required
6 certification are subject to be stricken on the Court's own motion or the imposition of other
7 sanctions.

8 Accordingly,

9 **IT IS ORDERED** that Plaintiff shall file its written election to either consent to
10 magistrate-judge jurisdiction or elect to proceed before a United States district judge on or
11 before **Tuesday, March 19, 2013**.

12 **IT IS FURTHER ORDERED** that motions to dismiss pursuant to Rule 12(b)(6),
13 Fed.R.Civ.P., or Rule 12(c), Fed.R.Civ.P., must contain a certification of conferral, indicating
14 that counsel have conferred to determine whether an amendment could cure a deficient
15 pleading, have been unable to agree that the pleading is curable by a permissible amendment,
16 and have otherwise complied with this Order.

17 **IT IS FURTHER ORDERED** that counsel shall comply with the District Court's
18 civil Local Rules ("LRCiv"), including LRCiv 7.1(a)(3) which mandates that for captions,
19 "[p]arty names must be capitalized using proper upper and lower case type[.]" LRCiv
20 7.1(a)(3). (A sample of proper capitalization is provided in Appendix C – LRCiv 7.1 Form)

21 **IT IS FURTHER ORDERED** that Plaintiff must serve a copy of this Order upon all
22 Defendants served with the Summons and Complaint and file notice of such service.

23 **IT IS FURTHER ORDERED** that counsel must hereinafter comply with the Rules
24 of Practice for the United States District Court for the District of Arizona. The District's
25 Rules of Practice may be found on the District Court's internet web page at
26 www.azd.uscourts.gov/.

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